85-660

Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985

THE STATE OF COLORADO,

Petitioner,

v.

FRANCIS BARRY CONNELLY,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF COLORADO

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Where respondent, who had been treated for mental problems, walked up to a street patrol officer and confessed to the unsolved killing of a young girl, said that God had told him to confess, and thereafter directed police to evidence corroborating his confession, does the Due Process Clause of the Fourteenth Amendment to the federal constitution, as interpreted by this Court, compel suppression of the confession?

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OPINION BELOW

The opinion of the Colorado Supreme Court in the People of the State of Colorado v. Connelly is reported in 702 P.2d 722 (Colo. 1985). A copy of the

opinion is attached as Exhibit "A".

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

Writ of Certiorari to the Supreme Court of Colorado is here sought to review the judgment and opinion in The People of the State of Colorado v. Francis Barry Connelly, 702 P.2d 722 (Colo. 1985).

(i) On July 8, 1985, the Colorado Supreme Court issued its opinion in People v. Connelly; and, on July 9, 1985, the court issued its order of remittitur to the trial court. This is the judgment sought to be reviewed.

(ii) This case involved an interlocutory appeal pursuant to Colorado Appellate Rule 4.1, by the People of the State of Colorado (hereafter referred to as "the People" or "the Prosecution") from the trial court's order suppressing defendant Connelly's confession to first degree murder.

Colorado Appellate Rule 4.1(g), Exhibit "B" in the appendix to this Petition, specifically prohibits a petition for rehearing on interlocutory appeals in criminal cases.

On July 18, 1985, the People filed a motion to vacate the remittitur, Exhibit "C" to this petition. On July 19, 1985, the Colorado Supreme Court denied the motion and the appellate judgment thereupon became final.

On September 12, 1985, Justice Byron R. White signed an order, No. A-192, extending the time for filing this petition for writ of certiorari to and including October 6, 1985.

(iii) On August 6, 1985, the state district court set the case for preliminary hearing on August 14, 1985. On August 14, 1985, petitioner asked for a stay of proceedings

to allow a petition for writ of certiorari to be filed in this Court, but the district court declined to rule and set August 28, 1985 for adversary hearing on the requested stay. On August 28, 1985, after the hearing for the requested stay, the court granted the request. Thereafter, respondent asked the Colorado Supreme Court to remove the stay. On August 29, 1985, the Colorado Supreme Court declined to rule on removal of the stay.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A., section 1257 and Rule 17.1(c) of the Rules of the Supreme Court. The latter provides that a review on writ of certiorari may be considered "when a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal

question in a way in conflict with applicable decisions of this Court." U.S. Sup.Ct. Rule 17.1(c).

The date of the Colorado Supreme Court's opinion in the interlocutory appeal was July 8, 1985. The date of the Order that denied the People of the State of Colorado's Motion to Vacate Remittitur is July 19, 1985. Pursuant to U.S. Sup.Ct. Rule 20.1, 28 U.S.C.A., "A petition for writ of certiorari to review the judgment in a criminal case of a state court of last resort or of a federal court of appeals shall be deemed in time when it is filed with the Clerk within 60 days after the entry of such judgment."

CONSTITUTIONAL PROVISION INVOLVED IN THE SUBJECT CASE.

> SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

> privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const.Amend. XIV.

CONCISE STATEMENT OF THE CASE

Statement of Pertinent Facts

The factual statement in the Colorado Supreme Court's opinion suffices, with one short addition, for the statement of facts in this petition for certiorari. The following is from pages 4 through 8 of the opinion (Exhibit "A" to this petition), and "the defendant" refers to the respondent in this petition:

> On August 18, 1983, while in uniform on an off-duty assignment in downtown Denver, Officer Anderson of the Denver Police Department was approached by the defendant who told him that "he had killed someone" and wanted to tell the officer about it. The officer noted that the defendant's physical appearance was clean and neat, but the nature of the defendant's statement prompted the officer to ask the defendant whether he had received treatment for any

mental disorders. The defendant stated that he had.

After being informed by the officer of his Miranda rights and stating that he understood those rights, the defendant elaborated further on his initial statement. He told the officer that he had killed a young girl with whom he had been travelling and that the killing occurred near the area of West Mississippi Avenue in Denver during November or December of 1982. The officer then checked the defendant's driver's license for identification and telephoned the Denver Police Department to determine if they had any information on the killing reported by the defendant.

Detective Antuna then arrived at the scene, having ascertained that an unidentified body of a female had been discovered in west Denver in April 1983. After the detective administered a Miranda advisement, the defendant stated that the victim was Marry Anne Junta and that he would be glad to show the officers where the killing occurred. The defendant, Detective Antuna, and another officer then proceeded toward southwest Denver in accordance with directions given by the defendant. The defendant directed the police to a storage structure located near the intersection of Alameda Avenue

and Pecos Street and, becoming visibly agitated, indicated that he had stabbed the victim at this location and had covered her body up with a mattress. Both Officer Anderson and Detective Antuna testified that no promise, force, threat, or coercion was directed against the defendant in interrogating the defendant about the details of the crime.

Dr. Jeffrey Metzner, a psychiatrist whom the court had previously appointed to conduct a competency examination of the defendant, was called as a defense witness and testified that the defendant's statements to the police on August 18, 1983, were not voluntary. This opinion was based in part on the following history which the doctor was able to elicit from the defendant during the competency evaluation. In the late afternoon of August 17, 1983, the defendant began to experience the voice of God telling him to go to Denver from Boston in order to confess his crime to the police. The defendant obeyed the voice and purchased an airplane ticket to Denver on that same evening. After arriving in Denver the defendant spent the night looking for the crime scene and was eventually able to locate it with the help of the voice that was speaking to him. The defendant then considered returning home, but God's voice

> told him he had only two options: he must either confess to the crime or commit suicide. It was at this point that the defendant went to the downtown area of Denver and confessed to the first policeman he was able to find. Dr. Metzner testified that the defendant on August 18, 1983, was suffering from chronic paranoid schizophrenia and that his statements to the police resulted from "command auditory hallucinations," a symptom of his mental disorder. Because, in the doctor's view, persons suffering from such hallucinations feel "as if they have to act on whatever the voice is telling them," the doctor was of the opinion that the defendant was unable to make a free and intelligent decision about whether to speak and confess to the police."

In addition, the evidence in the record of the suppression hearing shows that the respondent also said that the voice of God had told him to do the following: withdraw money from the bank and buy a plane ticket from Boston to Denver; check into a hotel in Denver; revisit the scene of the alleged killing; send $403 in an envelope addressed to his

mother in Boston, who received the money; and, respondent did all those things. He had also planned to send home the key to his motorcycle, but God told him that he did not have the time. Respondent further said that God had told him to buy a razor blade to kill himself or to confess the killing. Respondent then took a bus into downtown Denver, where he walked up to a policeman and confessed.

Statement of Pertinent State Court Proceedings

On March 7, 1984, before preliminary hearing, respondent moved to suppress all his statements and evidence that is the "fruit" of his statements on the grounds inter alia that his confession was "involuntary in that it was not knowingly or intelligently made."

On May 25, 1984, the evidentiary suppression hearing was held before the preliminary hearing, and the district court suppressed respondent's confession.

The court's ruling spanned over seven pages of transcript, of which the following is pertinent to the requirements of Sup.Ct.R. 21.1(h).

> (1) The Court does not need to decide whether or not legally the Defendant was insane at the time of the statements being made, only must find whether or not the Prosecution has proved by a preponderance of the evidence that he was voluntarily giving those statements.
>
> (2) The Court ruled that:
>
> The essence of the admission of the confession is based upon in the Court's estimation and by these cases the fact that there is an element of self-direction in the giving of the statements. I believe this is an overflow of the basic Judeo-Christian ethic of self-determination and free will.

(3) To support its ruling, the court relied upon Townsend v. Sain, 372 U.S. 293 (1962) and Culombe v. Connecticut, 367 U.S. 568 (1961):

(a) The court concluded that the following language of Townsend was "definitive":

> "If an individual's will was overborne or if his confession was not the product of a rational intellect and a free will, his confession is inadmissible because coerced. There's no element there, and there's none in the Culombe quote that's cited which indicates that there has to be something done by the police in order to make the confession involuntary."

Townsend, 372 U.S. at 307.

(b) The court further concluded and again ruled:

> The Court feels, therefore, that the confession and all statements made to the police and all directions given by the Defendant in finding and locating the scene of the crime must be -- may not be presented as evidence, not necessarily that they are suppressed, merely under the language of the Culombe case this confession or its admissibility would offend due process...

On June 4, 1984, the People of the State of Colorado took an interlocutory appeal, pursuant to Colorado Appellate Rule 4.1. The People's Opening Brief raised the single issue of the

admissibility of the confession that is the core of this petition for a writ of certiorari. The brief cited Blackburn v. Alabama, 361 U.S. 199 (1960), and Culombe v. Connecticut, 367 U.S. 568 (1961), and contended that they did not compel suppression of the confession in this case. The answer brief of respondent alleged that admission of his confession would deprive him of due process, relying on the Blackburn and Culombe, and Townsend opinions of this Court.

On July 8, 1985, the majority of the Colorado Supreme Court announced its opinion, Exhibit "A" to this petition, in which it affirmed the district court's suppression of respondent's confession to the street patrol officer. The state supreme court stated that its decision was based upon constitutional principles, i.e., the right of the accused to due process, and looked to Lego v. Twomey, 404

U.S. 477 (1972), as well as Blackburn, Culombe, and Townsend, supra, as supporting its decision that the confession here at issue was involuntary. The court declared:

> Given this state of the evidence, it was within the court's prerogative to rule that the defendant's initial statement to Officer Anderson was not the product of a rational intellect and a free will notwithstanding the fact that this statement was neither solicited by the officer nor was the result of any form of police action.

LEGAL ARGUMENT

This petition for a writ of certiorari is requested to resolve the issue of whether the Due Process Clause of the Fourteenth Amendment to the federal constitution compels the exclusion from evidence of the respondent's confession.

I. The Confession in Issue.

The respondent's confession, as the Colorado Supreme Court stated in its opinion, "was neither solicited by the

officer nor was the result of any form of police action." People v. Connelly, 702 P.2d 722, 729 (Colo. 1985), Exhibit "A" at p. 22. The record is undisputed that the respondent simply walked up to a uniformed patrol officer on a downtown Denver street and confessed to having killed a 14-year old girl in Denver four months earlier. Before the respondent's confession, the girl's body had already been found, but the killing had remained unsolved. Thereafter, the respondent corroborated his confession by directing police to supporting evidence. His later confession, which involves a Miranda issue, is not an issue in this petition.

The Colorado Supreme Court's opinion unequivocally acknowledged that the respondent's initial confession was not coerced, elicited, or solicited in any way by any state action.

II. The Respondent's Mental Condition.

The record shows that since 1979, the respondent had been committed five times for treatment of mental illness, resulting in institutional stays ranging from a few months to seven days. His most recent release had been in April 1983, after a ten days' stay. The respondent's diagnosis was paranoid schizophrenia, and he had told the court-appointed psychiatrist that he had auditory hallucinations.

III. The Colorado Supreme Court's Holding.

The mental condition of the respondent rendered his confession involuntary on constitutional principles.

The state supreme court held that the respondent's mental condition sufficed in itself to render his confession involuntary -- despite the lack of any state involvement whatsoever in respondent's confession. The court relied for its decision upon the opinions

of this Court interpreting the Due Process Clause of the Fourteenth Amendment as applied to confessions.

IV. The Petitioner's Position.

The respondent's mental condition does not and should not ipso facto render admission of his self-initiated confession a violation of his right to Due Process. Instead, his mental condition should result in one of two alternatives: either the respondent enters a plea of not guilty by reason of insanity; or, the respondent is tried on the first degree murder charge, having been found competent to stand trial.

The petitioner avers that the third alternative, which is the present posture of the case, is based on the misapplication of the Fourteenth Amendment and misperception of this Court's interpretations of the Due Process Clause. The now excluded confession of

the respondent permits him to walk free, because all the state's evidence is derivative from his initial confession to the previously unsolved murder. A local newspaper editor summed up the result of this misapplication of due process in non-legalistic but trenchant words:

> When God talked to Joan of Arc in the 15th century, all she got for the privilege was death at the stake. But the future has brightened. After God talked to Francis Connelly, current resident of the Denver County Jail, Connelly found the visitation far more useful. Why, it may even help him beat a murder charge.
>
> And they say miracles don't happen any more. [Exhibit "E" to this petition, column in full, by Vincent Carroll, Assistant editorial page editor, Rocky Mountain News, July 11, 1985.]

V. <u>The People's Position is Consistent with the Pertinent Decisions of this Court</u>.

The Colorado Supreme Court looked to four opinions of this Court to support its decision excluding evidentiary use of the

respondent's confession to murder, these four opinions are discussed in the order that they appear in the state court opinion.

(1) Lego v. Twomey, 404 U.S. 477 (1972).

The state court cited Lego solely for the well-accepted rule that where voluntariness of a confession is an issue, the prosecution must prove by a preponderance of the evidence that the confession is voluntary.

(2) Townsend v. Sain, 372 U.S. 293 (1963).

The state court stated that "the ultimate test of voluntariness is whether the statement was the product of a rational intellect and a free will", citing Townsend. People v. Connelly, 702 P.2d 722, 728 (Colo. 1983), Exhibit "A", p.17. Townsend, a heroin addict, had been periodically interrogated by police

at several district stations over a period of hours and confessed immediately after a police physician injected him with a "truth serum" drug.

The Townsend Court declared the following standard to apply:

> If an individual's "will was overborne" or if his confession was not "the product of a rational intellect and a free will," his confession is inadmissible because coerced. 372 U.S. at 307. [Emphasis added.]

The Court then stated:

> These standards are applicable whether a confession is the product of physical intimidation or psychological pressure and, of course, are equally applicable to a drug-induced statement....Any questioning by police officers which in fact produces a confession which is not the product of a free intellect renders that confession inadmissible. 372 U.S. at 307. [Emphasis on "Any questioning by police officers" added by petitioner; emphasis on "in fact" by court."]

The Townsend standard for a voluntary confession was indisputably, therefore,

applied to a police interrogation setting, without any indication that the standard applies where the claimed coercion is unrelated to any state action. A fortiorari, application of the Townsend standard to the self-motivated confession in the case at bar extends Townsend beyond the import of the opinion.

(3) Culombe v. Connecticut, 367 U.S. 568 (1961).

The Colorado Supreme Court relied upon Culombe for two propositions: First, "If the statement was a product of an essentially rational and free choice by its maker, then it may be used against him at trial; if it was not, the admission of the statement at trial offends due process of law". Secondly, "The issue of voluntariness must be resolved by evaluating the totality of circumstances surrounding the making of the statement". Connelly, 702 P.2d at 728, Exhibit "A".

The totality of the circumstances in Culombe are briefly stated: Culombe, with the mental age of a 9-year old, was taken into police custody, confined, and questioned for more than four days before he confessed.

Again, the Court's opinion is couched in the language of the will of the person confessing being overborne by the police. Thus, the Court pointed out that Culombe's mental retardation was a factor because he was suggestible and subject to intimidation. Culombe, 367 U.S. at 625. Here, Connelly was not subjected to any police questioning or to any improper external pressures.

(4) Blackburn v. Alabama, 361 U.S. 199 (1960).

Blackburn, a psychotic with hallucinations, confessed after police had interrogated him for eight or nine hours in a tiny room, with as many as three

officers present. The Court reversed his conviction, stating that coercion can be mental as well as physical, and declared:

> [T]he Fourteenth Amendment is grievously breached when an involuntary confession is obtained by state officers and introduced into evidence in a criminal prosecution that culminates in a conviction. 361 U.S. at 205. [Emphasis added.]

The petitioner reiterates: Connelly accosted a uniformed police officer on the street and spontaneously confessed to a murder -- far removed from the official and protracted police coercion in Blackburn.

CONCLUSION

The petitioner submits that the Due Process Clause of the Fourteenth Amendment and this Court's interpretations of that clause do not compel or justify the Colorado Supreme Court's decision. The effect of the state court's holding is insidious: what one person may call the "voice of God", another may call the

"voice of conscience". Under Connelly, the result is the same: without state action in any form, a person can spontaneously confess to a crime, then state a moral compulsion to confess, and constitutional principles will render the confession involuntary. The crucial question was asked in one of the appended news articles, Exhibit "E", on the Connelly decision: "How is the confession of any guilt-stricken person entirely voluntary, in the sense that it's free of compulsion?"

Respectfully submitted,

NORMAN S. EARLY, JR.
District Attorney
Second Judicial District
State of Colorado

By Brooke Wunnicke
BROOKE WUNNICKE
Chief Appellate Deputy District Attorney
(Admitted to this Court on April 29, 1958)

CERTIFICATE OF SERVICE

I do hereby certify that on the 1st day of October, 1985, I placed in the United States mail, postage prepaid and properly sealed and addressed, a copy of the foregoing Petition for Writ of Certiorari to:

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EXHIBIT "A"

SUPREME COURT, STATE OF COLORADO
CASE NO. 84SA270 July 8, 1985

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff-Appellant,

v.

FRANCIS BARRY CONNELLY,
Defendant-Appellee.

Interlocutory Appeal, District Court
City and County of Denver
Honorable Paul A. Markson, Jr., Judge

EN BANC JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED WITH DIRECTIONS.

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CHIEF JUSTICE QUINN delivered the Opinion of the Court. JUSTICE ERICKSON concurs in part and dissents in part and JUSTICE ROVIRA joins in the concurrence and dissent.

The People, pursuant to C.A.R. 4.1, challenge a ruling of the district court suppressing inculpatory statements made by the defendant and any evidence that might have been derived from those statements. The district court ruled that the defendant was suffering from a severe mental disorder which rendered his statements involuntary and that the prosecution had not met its burden of proving an effective waiver of the defendant's Miranda rights.[1] We affirm in part, reverse in part, and remand with directions.

I.

The defendant was charged with the second degree murder[2] of Marry Anne Junta, allegedly committed in Denver, Colorado, between December 1, 1982, and February 1, 1983. Subsequent to the filing of the charge, the court determined that the defendant was incompetent to stand trial.

After approximately six months of treatment at the Colorado State Hospital the defendant was certified as competent to proceed, and the case was set for a preliminary hearing in the Denver District Court.

Prior to the preliminary hearing the defendant moved to suppress a confession and evidence obtained as a result of the confession. The basis for the suppression motion was that the defendant was mentally incompetent at the time of this confession, thereby rendering his confession involuntary and precluding a valid waiver of his Miranda rights. The defendant requested the court to conduct the suppression hearing in advance of the preliminary hearing. The prosecution made no objection to this procedure, and the district court acquiesced in the defendant's request.

Evidence presented at the suppression

hearing established the following facts. On August 18, 1983, while in uniform on an off-duty assignment in downtown Denver, Officer Anderson of the Denver Police Department was approached by the defendant who told him that "he had killed someone" and wanted to tell the officer about it. The officer noted that the defendant's physical appearance was clean and neat, but the nature of the defendant's statement prompted the officer to ask the defendant whether he had received treatment for any mental disorders. The defendant stated that he had.

After being informed by the officer of his Miranda rights and stating that he understood those rights, the defendant elaborated further on his initial statement. He told the officer that he had killed a young girl with whom he had been travelling and that the killing occurred near the area of West Mississippi

Avenue in Denver during November or December of 1982. The officer then checked the defendant's driver's license for identification and telephoned the Denver Police Department to determine if they had any information on the killing reported by the defendant.

Detective Antuna then arrived at the scene, having ascertained that an unidentified body of a female had been discovered in west Denver in April 1983. After the detective administered a Miranda advisement, the defendant stated that the victim was Marry Anne Junta and that he would be glad to show the officers where the killing occurred. The defendant, Detective Antuna, and another officer then proceeded toward southwest Denver in accordance with directions given by the defendant. The defendant directed the police to a storage structure located near the intersection of Alameda Avenue and

Pecos Street and, becoming visibly agitated, indicated that he had stabbed the victim at this location and had covered her body up with a mattress. Both Officer Anderson and Detective Antuna testified that no promise, force, threat, or coercion was directed against the defendant in interrogating the defendant about the details of the crime.

Dr. Jeffrey Metzner, a psychiatrist whom the court had previously appointed to conduct a competency examination of the defendant, was called as a defense witness and testified that the defendant's statements to the police on August 18, 1983, were not voluntary. This opinion was based in part on the following history which the doctor was able to elicit from the defendant during the competency evaluation. In the late afternoon of August 17, 1983, the defendant began to experience the voice of God telling him to

go to Denver from Boston in order to confess his crime to the police. The defendant obeyed the voice and purchased an airplane ticket to Denver on that same evening. After arriving in Denver the defendant spent the night looking for the crime scene and was eventually able to locate it with the help of the voice that was speaking to him. The defendant then considered returning home, but God's voice told him he had only two options: he must either confess to the crime or commit suicide. It was at this point that the defendant went to the downtown area of Denver and confessed to the first policeman he was able to find. Dr. Metzner testified that the defendant on August 18, 1983, was suffering from chronic paranoid schizophrenia and that his statements to the police resulted from "command auditory hallucinations," a symptom of his mental disorder. Because,

in the doctor's view, persons suffering from such hallucinations feel "as if they have to act on whatever the voice is telling them," the doctor was of the opinion that the defendant was unable to make a free and intelligent decision about whether to speak and confess to the police.

The district court granted the defendant's suppression motion. Although noting that the police had advised the defendant of his Miranda rights, that the defendant had stated he understood those rights, and that the police had not acted improperly in speaking to the defendant and recording his statements, the court found that the defendant did not exercise free will in choosing to speak to the police, but rather was "compelled by his illness to do that which he did." The court thus determined that the prosecution had failed to prove by a preponderance of

the evidence that the defendant's statements to the police on August 18, 1983, were voluntarily made. The court further concluded that, because the defendant's psychosis compelled him to follow the mandate of God and confess to the crime rather than kill himself, the prosecution had not carried its burden of proving by clear and convincing evidence that the defendant had voluntarily, knowingly, and intelligently waived his Miranda rights. The court accordingly suppressed the defendant's confession and all subsequent statements made by the defendant while in police custody. In addition, the court ruled that any evidence that might have been discovered by the police subsequent to the defendant's statements "would be directly related to the Defendant's statements" and, without determining whether such evidence actually existed or its

connection to the defendant's statements, suppressed all such evidence as well.

The People, emphasizing the noncustodial and unsolicited nature of the defendant's first statement to Officer Anderson and the absence of any evidence of police misconduct in the subsequent custodial interrogations of the defendant, argue that the district court erred in suppressing the defendant's initial statement as involuntarily made, also in suppressing his subsequent statements as obtained in violation of the defendant's Miranda rights, and finally in suppressing any evidence that might arguably have been derived from those statements. We conclude that the record of the suppression hearing adequately supports the court's determination that the defendant's initial statement to Officer Anderson was not voluntarily made and that his statements subsequent to his arrest

were not the result of a valid waiver of his Miranda rights. We therefore hold that in the event the defendant is bound over for trial as the result of a preliminary hearing, the defendant's inculpatory statements may not be admitted into evidence at trial. The limited record in this case, however, does not permit us to determine what evidence, if any, might have been derived from the defendant's statements. We accordingly reverse that part of the suppression order relating to the derivative evidence and remand the case to the district court for the purpose of conducting a further hearing in accordance with controlling constitutional principles.

II.

Before resolving the correctness of the suppression order itself, we consider as a preliminary matter the propriety of the procedure adopted by the district

court in hearing and ruling on the defendant's motion to suppress in advance of a preliminary hearing. Although the prosecution did not object to this procedure, we nonetheless believe the matter to be of sufficient importance to address it on our own motion.

The basic purpose of a preliminary hearing is to permit the court to determine whether probable cause exists to believe that the crime charged in the complaint or information was committed by the defendant. E.g., People v. Taylor, 655 P.2d 382 (Colo. 1982); People v. Johnson, 618 P.2d 262 (Colo. 1980). A preliminary hearing serves as a screening device which affords the defendant an early opportunity to challenge the filing of criminal charges against him "by forcing the government to present its evidence to an impartial judge for examination." People v. Quinn, 183

Colo. 245, 249, 516 P.2d 420, 422 (1973). When probable cause is not established, the court is empowered to dismiss the case at an early stage, thereby avoiding the needless expenditure of judicial resources and relieving the accused of the anxiety and financial burden of a criminal trial. Holmes v. District Court of Summit County, 668 P.2d 11 (Colo. 1983).

Because of the limited purpose for which a preliminary hearing is intended, we believe that extending the exclusionary rule to this phase of the criminal process would precipitate a vast array of constitutional issues normally reserved for resolution by the trial court and would thus disrupt the expeditious resolution of the probable cause issue. Furthermore, given the rigid time restrictions for setting a preliminary hearing after a request is made,[3] it is quite obvious that both the defense and

the prosecution would be somewhat hard put to fully litigate suppression issues at this early phase of the criminal process. Requiring suppression motions to be resolved by the court with trial jurisdiction only after probable cause has been determined enhances the orderly processing of cases without in any manner depriving the defendant of a full and fair opportunity to assert issues that relate to the constitutional admissibility of evidence at trial.[4]

We thus conclude that the district court erred in ruling on the defendant's motion to suppress prior to conducting a preliminary hearing on the charge of second degree murder filed against the defendant. This practice contravenes the intended purpose of a preliminary hearing and results in a wasteful expenditure of judicial resources. See United States v. Calandra, 414 U.S. 338 (1974) (grand jury

witness not permitted to invoke exclusionary rule in refusing to answer questions based on evidence obtained from unlawful search and seizure); Gannett Pacific Corp. v. Richardson, 59 Hawaii 224, 580 P.2d 49, 56 (1978) (dictum that "a damaging confession, which may later be suppressed at the trial level on the ground that it was involuntary and illegally obtained by the police, may be admitted at a preliminary hearing"); People ex rel. Pierce v. Thomas, 70 Misc.2d 629, 334 N.Y.S.2d 666 (Sup.Ct. 1972) (questions concerning the legality of a search or the lawfulness of a confession are not germane to the issue of probable cause at a preliminary hearing). On remand of this case the district court should conduct a preliminary hearing without regard to whether or not the evidence submitted by the prosecution satisfies the standards of constitutional

admissibility applicable to a trial on the merits. In ruling on the issue of probable cause, the district court should view the evidence in a light most favorable to the prosecution and should reject only that evidence which is incredible as a matter of law. E.g., Hunter v. District Court, 190 Colo. 48, 543 P.2d 1265 (1975).

III.

Although we disapprove of the practice of resolving a suppression motion prior to a preliminary hearing, we nonetheless elect to address the merits of the People's appeal in the interest of judicial economy. There are two categories of statement encompassed by the court's suppression order: (1) the defendant's initial and noncustodial statement to Officer Anderson that he killed someone and wanted to tell the officer about it; (2) the defendant's

custodial statements made to the police after he was taken into custody and advised of his Miranda rights. We consider each category of statement separately.

A.

We find no merit in the People's argument that, because the district court found that the defendant's initial statement was not the result of any questioning by the police, the suppression of the defendant's statement as involuntarily made was erroneous. When an issue is raised as to the voluntariness of a statement made by an accused, the burden is on the prosecution to establish by a preponderance of evidence that the statement was voluntary. E.g., Lego v. Twomey, 404 U.S. 477 (1972); People v. Raffaelli, 647 P.2d 230 (Colo. 1982). The ultimate test of voluntariness is whether the statement was the product

of a rational intellect and a free will. E.g., Townsend v. Sain, 372 U.S. 293 (1963); Raffaelli, 647 P.2d 230. If the statement was a product of an essentially rational and free choice by its maker, then it may be used against him at trial; if it was not, the admission of the statement at trial offends due process of law. Culombe v. Connecticut, 367 U.S. 568 (1961).

The issue of voluntariness must be resolved by evaluating the totality of circumstances surrounding the making of the statement. E.g., Culombe, 367 U.S. 568; Raffaelli, 647 P.2d 230. "Relevant circumstances include the occurrences and events surrounding the confession and the mental condition of the person making the statement." Raffaelli, 647 P.2d at 235. The administration of Miranda warnings before a statement is made does not insulate the statement "from an inquiry

into whether it was voluntarily given." Id. Moreover, the absence of police coercion or duress does not foreclose a finding of involuntariness. One's capacity for rational judgment and free choice may be overborne as much by certain forms of severe mental illness as by external pressure. See Blackburn v. Alabama, 361 U.S. 199 (1960).

In Hunter v. People, 655 P.2d 374 (Colo. 1982), we considered the issue whether the trial court erred in admitting into evidence, without a preliminary determination of voluntariness, a confession made by the defendant to a private individual, a department store security guard, after the guard allegedly told the defendant that he would return his driver's license and allow him to leave if the confession were to be signed. We initially noted that a defendant's due process rights are violated if his

conviction is founded in whole or in part upon an involuntary confession, without regard to the sufficiency of the evidence apart from the confession. Addressing the issue of state action, we then stated:

> The Due Process Clause of the Fourteenth Amendment, by its very terms, applies only to state action, and on this basis the People argue that because there was no state action, the defendant's due process rights were not violated. E.g., Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048 (1921). Clearly, no state action is involved in the accused's making an admission of guilt to a private citizen. State action enters the picture, however, when a trial court permits the prosecution at a jury trial to utilize as evidence of guilt a confession which is extracted under circumstances that so overbear the individual's will as to render the statement involuntary, that is, "not the product of a rational intellect and a free will." Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 90 L.Ed.2d 770 (1963). To avoid the exposure of such a confession to a jury when an accused claims it is involuntary, the trial court must conduct an in camera hearing to avoid a violation of

> the accused's due process rights. Here, the defendant maintained that his signed confession was involuntary and should not be admitted as evidence before a jury. Under the facts of this case, the admission of the signed confession triggered a valid claim that the defendant's due process rights had been violated.

655 P.2d at 375-76.

The record in this case supports the district court's determination that the defendant's initial statement to Officer Anderson on August 18, 1983, was not voluntary. The testimony of Dr. Metzner established that the defendant on this occasion was suffering from a serious mental disorder which placed him in the dilemma of confessing his crime to the police or committing suicide. Given this state of the evidence, it was within the court's prerogative to rule that the defendant's initial statement to Officer Anderson was not the product of a rational intellect and a free will notwithstanding

the fact that this statement was neither solicited by the officer nor was the result of any form of police action.

B.

We also reject the People's argument that the district court erred in suppressing the defendant's custodial statements as obtained in violation of his Miranda rights. A separate consideration in ruling on a motion to suppress is whether, prior to the onset of custodial interrogation, the defendant has been properly advised of his Miranda rights and has validly waived effectuation of those rights. Custodial interrogation conducted in violation of Miranda creates a presumption of compulsion. Oregon v. Elstad, ___ U.S. ___, ___, 105 S.Ct. 1285, 1292 (1985); New York v. Quarles, 467 U.S. ___, ___, 104 S.Ct. 2626, 2631 (1984). The prosecution, therefore, bears the burden

of proving by clear and convincing evidence that the defendant voluntarily, knowingly, and intelligently waived his Miranda rights. People v. Fish, 660 P.2d 505 (Colo. 1983); People v. Lowe, 200 Colo. 470, 616 P.2d 118 (1980).

In light of the psychiatric testimony presented to the district court, we see no reason to disturb the court's conclusion that the prosecution failed to prove by clear and convincing evidence that the defendant effectively waived his Miranda rights. The testimony of Dr. Metzner clearly established that the defendant's mental condition on August 18, 1983, was such that he was incapable of making an intelligent and free decision with respect to his constitutional right of silence while in custody and his constitutional right of silence while in custody and his constitutional right to confer with a lawyer before talking to the police. We

therefore affirm the suppression order insofar as it prohibits the prosecution from using at trial the defendant's inculpatory statements made on August 18, 1983.

IV.

We last consider whether the district court properly suppressed any and all evidence discovered by the police subsequent to August 18, 1983, as the illegal product of the defendant's inculpatory statements. The derivative evidence rule, which serves to exclude evidence obtained as a result of a violation of the defendant's constitutional rights, applies not only to Fourth Amendment violations but to Fifth and Sixth Amendment violations as well. Nix v. Williams, ____ U.S. ___, ___, 104 S.Ct. 2501, 2508 (1984). Thus, if an involuntary custodial statement is obtained from a defendant without a valid

waiver of Miranda rights, evidence subsequently obtained by the police as a result of the constitutional violation may be suppressible as the fruit of the initial illegality. People v. Lee, 630 P.2d 583 (Colo. 1981); People v. Saiz, 620 P.2d 15 (Colo. 1980); Lowe, 200 Colo. 470, 616 P.2d 118. The prosecution in such a case bears the burden of proving that any evidence sought to be admitted was not acquired as the result of the constitutional violation. The prosecution may meet this burden by establishing that the challenged evidence was obtained from a source independent of the illegality, Wong Sun v. United States, 371 U.S. 471 (1963), that the challenged evidence is sufficiently attenuated from the initial interrogation to permit its admission at trial, United States v. Ceccolini, 435 U.S. 268 (1978), or that the evidence might inevitably have been discovered

notwithstanding the constitutional violation, Williams, ___ U.S. ___, 104 S.Ct. 2501.

The record in this case is totally devoid of any evidence establishing either the nature of the derivative evidence suppressed by the court or the nexus, if any, between the defendant's inculpatory statements and the derivative evidence. What we are confronted with, therefore, is a blanket suppression order which is not only unsupported by evidence in the record but is also lacking in basic factual findings necessary for a meaningful appellate review. We therefore reverse the suppression of derivative evidence and remand for further proceedings on this aspect of the case. The district court should apply the principles outlined above in resolving any issues relating to evidence that the defendant claims was

obtained as the result of his statements on August 18, 1983.

V.

Because the district court improperly ruled on the defendant's motion to suppress prior to a preliminary hearing, we remand the case to the district court for a preliminary hearing. In the event the court finds probable cause and orders the defendant bound over for trial, the court need not rehear the defendant's motion to suppress the inculpatory statements of August 18, 1983, as that part of the suppression ruling is affirmed. We reverse, however, that part of the suppression ruling relating to derivative evidence and direct the district court, if probable cause is found, to conduct a further suppression hearing on this aspect of the case in accordance with the views herein expressed.

JUSTICE ERICKSON concurs in part and dissents in part and JUSTICE ROVIRA joins in the concurrence and dissent.

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[1] Miranda v. Arizona, 384 U.S. 436 (1966).

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[2] Section 18-3-103(1)(a), 8 C.R.S. (1978). The defendant was also charged in a second count with a crime of violence in violation of section 16-11-309, 8 C.R.S. (1984 Supp.).

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[3] Crim.P. 5(a)(4)(I) states in relevant part as follows:

> Within ten days after the defendant is brought before the county court, either the prosecuting attorney or the defendant may file a written motion for a preliminary hearing. Upon the filing of such a motion, the judge forthwith shall set the hearing. The hearing shall be held within thirty days of the day of the setting, unless good cause for continuing the hearing beyond that time be shown to the court.

Crim.P. 7(h)(1), in similar fashion, states that when a direct information is filed in the district court and either the defendant or the prosecuting attorney files a written motion requesting a preliminary hearing, the district judge shall set the hearing within thirty days of the setting, unless good cause for continuing the hearing beyond that period be shown to the court.

We recognize that there may be unique circumstances which justify a district court's consideration of a motion to dismiss criminal charges prior to a preliminary hearing. In People v. Manning, 672 P.2d 499 (Colo. 1983), for example, both the prosecution and defense, prior to a preliminary hearing, requested the district court to rule on the defendant's motion to dismiss, which was based on an alleged breach of a governmental promise not to prosecute the defendant in exchange for information from the defendant about the whereabouts of her missing child. Given these circumstances, the district court in Manning did not abuse its discretion in determining whether the scope of the governmental promise was such as to preclude any and all criminal proceedings, including a preliminary hearing, from taking place against the defendant or, alternatively, whether a lesser sanction such as the suppression of evidence was appropriate. In contrast to the Manning case, however, the defendant's motion in the instant matter went only to the suppression of evidence and not to the dismissal of charges.

JUSTICE ERICKSON concurring in part and dissenting in part:

I concur in the majority's analysis and resolution of the procedural issues in this case. The district court, in my opinion, erred in ruling on the defendant's motion to suppress prior to the preliminary hearing. The majority opinion properly addresses and reviews the scope of admissible evidence at the preliminary hearing. I differ with the majority, however, on the admissibility of the defendant's spontaneous and unsolicited statements to Officer Anderson and dissent to the exclusion of that evidence and evidence derived from that statement.

The record shows that the defendant approached Officer Anderson and volunteered that "he had killed someone," and wanted to tell the police about it.

The defendant's initial statement, which he volunteered prior to the Miranda warning, was completely spontaneous and was not elicited by police questioning of any kind. In my opinion, that statement, together with the evidence derived from the independent police investigation, is admissible at the defendant's trial. Nix v. Williams, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984).

It is axiomatic that a confession is admissible in evidence only if it is voluntarily given. Jackson v. Denno, 378 U.S. 368 (1964). To satisfy the test of voluntariness, a confession "must not be extracted by any sort of threats or violence, nor be obtained by any direct or implied promises, however slight." Brady v. United States, 397 U.S. 742 (1970); People v. Raffaelli, 647 P.2d 230, 235 (Colo. 1982); People v. Parada, 188 Colo. 230, 234, 533 P.2d 1121, 1123 (1975). In

my view, a statement can be suppressed as involuntary only if it has been extracted by police questioning or obtained through improper external force. See B. George, Constitutional Limitations on Evidence in Criminal Cases 259-61 (1973). Statements which a defendant volunteers independent of police questioning or external force should not be subject to suppression under the fifth amendment. See, e.g., Commonwealth v. Powell, 459 Pa. 253, 328 A.2d 507 (1974); Nevels v. State, 216 So.2d 529 (Miss. 1968); People v. Savage, 102 Ill.App.2d 477, 242 N.E.2d 446 (1968); Crummel v. State, 46 Wis. 2d 348, 174 N.W.2d 517 (1970) (the spontaneity of the declarations by defendant corroborates the voluntariness of the statements).

Rhode Island v. Innis, 446 U.S. 291 (1980), supports my conclusion that the initial statement should be admitted into evidence. In Innis, the defendant was in

custody and reacted to a conversation between his two police custodians by volunteering information about the crime under investigation. The defendant's statement to the police was found to be proper because it was not obtained by police interrogation. Here, the defendant was not in custody and spontaneously told Officer Anderson about the crime. The defendant was not questioned until after Miranda warnings were given.

The defendant's motivation for confessing in this case was not tied to police questioning or external pressures of any kind. Compare Blackburn v. Alabama, 361 U.S. 199 (1960); Townsend v. Sain, 372 U.S. 293 (1963); Hunter v. People, 655 P.2d 374 (Colo. 1982).[1] The defendant's statement demonstrated his desire to acknowledge his past crime so that he could purge himself of guilt. The "internal voices" that compelled his

confession were part and parcel of his own psychological makeup. The defendant initiated the contact with Officer Anderson and his conduct and statement should be admissible at trial on the issue of his mental condition as well as his guilt.[2] While the defendant's mental condition may be introduced at trial to attack the credibility of his confession or to establish nonresponsibility for the crime committed, the defendant's mental illness should not preclude a finding that his statement was voluntary for purposes of the fifth amendment. See State v. Boan, 235 Kan. 800, 686 P.2d 160 (1984); State v. Wright, 219 Kan. 808, 549 P.2d 958 (1976); State v. Ratow, 4 Wash App. 321, 481 P.2d 20, cert. denied, 404 U.S. 944 (1971).

The majority opinion essentially requires police officers to close their eyes and ears when openly approached with

evidence that a crime has been committed. I perceive no constitutional basis that would compel such a result. In my view, the defendant's initial statement to the police is admissible evidence.

I am authorized to say that JUSTICE ROVIRA joins in this concurrence and dissent.

[1] The majority cites Blackburn as holding that "[o]ne's capacity for rational judgment and free choice may be overborne as much by certain forms of severe mental illness as by external pressure." Slip op. at 11. In my opinion, Blackburn does not stand for the proposition for which it is cited. In Blackburn, the police subjected the defendant, who had a long history of mental illness, to eight hours of sustained interrogation in a small office which was at times filled with police officers. Based on these facts, the Court concluded that Blackburn's confession had not been voluntarily obtained. The defendant's mental illness was but one factor relied on by the Court in reaching its decision. Contrary to the majority's suggestion, Blackburn does not hold that mental illness alone can render a statement involuntary for purposes of the fifth amendment.

The majority's reliance on Hunter v. People is equally misplaced. In Hunter, we suppressed a statement obtained by a

security officer who had the defendants drivers license and refused to release the defendant or return the license until the statement was signed. Given these facts, we held that Hunter's confession had obviously been coerced and could not be used by the prosecution at trial. The facts in this case are quite different. The only pressure was from within the defendant himself, and that is only demonstrated by the testimony of a psychiatrist who has given his opinion on what the defendant's mental condition was the time he had made his statements to the police. The opinion of the psychiatrist was based solely on what the defendant told him. Other psychiatrists might well reach a different conclusion. In any event, the issue of competence and weight to be afforded the initial statement should be resolved at the time of trial.

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[2] The procedure to be followed in cases where sanity is an issue is statutorily prescribed. The defense of insanity in a criminal case must be raised by a special plea. Section 16-8-103, 8 C.R.S. (1978). In reviewing a defense in a criminal case predicated on lack of mental capacity two issues are paramount. First, whether the accused is competent to stand trial or proceed. See section 16-8-111, 8 C.R.S. (1978); ABA Mental Health Standards, 7-4.1. See also Drope v. Missouri, 420 U.S. 162 (1975); Pate v. Robinson, 383 U.S. 375 (1966). The second issue is whether the accused by reason of his mental condition at the time of the alleged commission of the offense is responsible for his conduct. Section 16-8-105, 8 C.R.S. (1978); ABA Mental Health Standards, 7-6.1.

EXHIBIT "B"

COLORADO APPELLATE RULES 4.1
INTERLOCUTORY APPEALS
IN CRIMINAL CASES

* * * *

(g) Disposition of Cause. No oral argument shall be permitted except when ordered by the court. The decision of the court shall be by written opinion, copies of which shall be transmitted by the clerk of the court by mail to the trial judge and to one attorney on each side of the case. No petition for rehearing shall be permitted. Remittitur shall accompany said opinion.

EXHIBIT "C"

SUPREME COURT, STATE OF COLORADO

Case No. 84SA270

MOTION TO VACATE REMITTITUR

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellant,

vs.

FRANCIS BARRY CONNELLY,

Defendant-Appellee.

The People of the State of Colorado, by and through Norman S. Early, Jr., District Attorney within and for the Second Judicial District, and by his duly appointed Deputy, Brooke Wunnicke, move to vacate the remittitur ordered in this case on July 9 and received July 11, 1985.

As grounds for this motion, the People allege that:

1. C.A.R. 4.1(g) prohibits a petition for rehearing on interlocutory appeals in criminal cases.

2. The opinion of the Supreme Court of Colorado, issued July 8, 1985, is, therefore, a final judgment.

3. The People of the State of Colorado intend to seek review of that final judgment by filing a Petition for Writ of Certiorari in the Supreme Court of the United States.

4. This matter should not, therefore, be remitted to the trial court until completion of review by the Supreme Court of the United States.

WHEREFORE, the People ask this court to vacate its order of remittitur in this matter, issued July 9, 1984 [sic] and received July 11, 1985.

Respectfully submitted July 18, 1985.

NORMAN S. EARLY, JR.
District Attorney
Second Judicial District
State of Colorado

BY: Brooke Wunnicke

BROOKE WUNNICKE, Reg. No. 4854
Chief Appellate Deputy
District Attorney

303 West Colfax Avenue
Denver, Colorado 80204
Telephone: 575-5933

CERTIFICATE OF MAILING

I certify that on July 18, 1985, I placed in the United States mail, postage prepaid and properly sealed and addressed, a true and complete copy of the foregoing MOTION TO VACATE REMITTITUR, to:

DAVID VELA,
Colorado State Public Defender
Abelardo P. Bernal
Deputy State Public Defender
331 14th Street
Denver, Colorado 80202

Brooke Wunnicke

Brooke Wunnicke

EXHIBIT "D"

SUPREME COURT, STATE OF COLORADO
Case No. 84 SA 270
INTERLOCUTORY APPEAL FROM THE DISTRICT COURT, CITY AND COUNTY OF DENVER

ORDER OF COURT

PEOPLE OF THE STATE OF COLORADO,
Plaintiff-Appellant,

vs.

FRANCIS BARRY CONNELLY,
Defendant-Appellee.

Upon consideration of the Motion to Vacate Remittitur filed by counsel for Plaintiff-Appellant herein, and now being sufficiently advised in the premises,

It Is This Day Ordered that said Motion shall be, and the same hereby is, Denied.

BY THE COURT, JULY 19, 1985

cc: Brooke Wunnicke
Chief Appellate Deputy
District Attorney

Abelardo P. Bernal
Deputy State Public Defender
331 - 14th Street
Denver, CO 80202

EXHIBIT "E"

Colorado court pushes frontiers of insanity

WHEN God talked to Joan of Arc in the 15th century, all she got for the privilege was death at the stake. But the future has brightened. After God talked to Francis Connelly, current resident of the Denver County Jail, Connelly found the visitation far more useful. Why, it may even help him beat a murder charge.

Vincent Carroll

And they say miracles don't happen any more.

The story is that God told Connelly to confess to a killing, which he dutifully did. He could either have confessed or committed suicide. That's how Connelly describes his choice, anyway, and the Colorado Supreme Court so much admired his sincerity that it has just ruled his confession doesn't count. The defendant lacked free will, the court majority said, without which no admission of guilt would be complete.

Understand that Connelly might be innocent. Naturally. All he did was show up in Denver two years ago, accost the nearest cop, and tell him he'd "killed someone" nearly 10 months earlier — a girl, it turns out, whose body had not even been firmly identified.

But Connelly knew a name. One that fit. Oh, yes, this former Boston resident knew quite a lot, enough to lead two policemen, after the Miranda warnings, to a site where he claimed 14-year-old Marry Anne Junta had died.

You might well wonder how the Supreme Court can be sure Connelly lacked free will on a single day in 1983. After all, couldn't his internal goad have been just another name for conscience?

Silly you. The court knows because a psychiatrist says so, and the psychiatrist knows because Connelly says so. Dr. Jeffrey Metzner interviewed Connelly a few weeks after his arrest, not long before the defendant was initially found incompetent to stand trial and sent to Colorado State Hospital. Metzner saw him again in February and this time decided, as hospital staff had concluded before him, that Connelly was now fit for the courtroom.

However, Metzner stuck by his original opinion that the confession had been involuntary. In the language of the trade, Connelly was a paranoid schizophrenic suffering "command auditory hallucinations." These words were enough for both the district court and Supreme Court. The confession was dead.

According to Keith Johnson, chief deputy district attorney, Metzner "tends to find more people insane — more than I would like anyway." But whatever the value of a psychiatrist's opinion, he can't really be blamed for how it is used by a court. Even if defendants don't always enjoy free will, presumably most judges do.

Yet in throwing out the confession, the Supreme Court quite probably demolished the entire case.

"We've got nothing left . . . or at least we've got very little," admits Johnson.

Curiously, the court sidestepped this fact. It solemnly declared it wouldn't rule on "what evidence, if any, might have been derived from the defendant's statements" and therefore also be tainted. But in fact virtually *all* evidence followed the confession, as the court fully well knew.

In short, the state Supreme Court has continued its trek toward the frontiers of judicial eccentricity. Is there another high court in the land, save perhaps California's, that so consistently suppresses evidence on bizarre technical grounds?

Justice William Erickson took the measure of this decision in a strong dissent, written with the concurrence of Justice Luis Rovira. "The majority opinion essentially requires police officers to close their eyes and ears when openly approached with evidence," Erickson wrote.

"In my view," he added, "a statement can be suppressed as involuntary only if it has been extracted by police questioning or obtained through improper external force."

Erickson went on to say that a patient's mental condition is relevant just to the extent it undermines the credibility of his statement or establishes his "non-responsibility" for the crime committed — in the manner of John Hinckley Jr., for example. Connelly is no model of stability, of course, but it is one thing to find a man not guilty of a crime by reason of insanity and quite another to throw out his confession because he thinks it was prompted by a higher power. Are police in Colorado now required, in addition to reading a suspect his rights, to assess the person's mental condition and refuse to investigate leads if they conclude he is unbalanced or schizophrenic?

If so, why not suppress all unsolicited admissions of guilt? Isn't a conscience merely the mix of values, empathy, instinct and — yes — religious belief that compel a person to act in a socially acceptable fashion, even if it goes against his short-term interest? How is the confession of *any* guilt-stricken person entirely voluntary, in the sense that it's free of compulsion?

Perhaps next time the Supreme Court should find an expert who will go the distance — if not a psychiatrist then a behavioral psychologist — someone who will contend that no confession is ever the product of free will, that free will is in fact a sham.

Surely the court should find that notion appealing: It's simple but abstract, and it's a bold departure in legal theory. Best of all, though, it helps the guilty go free.

Vincent Carroll is assistant editorial page editor.

EXHIBIT "F"

Rocky Mountain News

Founded April 23, 1859

Ralph Looney
Editor

William W. Fletcher
President, General Manager

"Give light and the people will find their own way."

Case cries for reversal

CONGRATULATIONS are in order for the Denver District Attorney's office, which has decided to challenge an outrageous decision by the Colorado Supreme Court. In their search for common sense, district attorneys will attempt to take their case to the highest tribunal in the land.

You may remember the bizarre ruling in question. It involved a man named Francis Connelly, who, on one fine day in 1983, accosted a city policeman and told him he'd murdered a girl a few months earlier. Connelly then proceeded to lead police to a site where an unidentified body had indeed been found. With information he provided, police soon discovered the girl's name.

> This case adds an ugly twist to defense lawyers' options.

A prosecutor's dream? By no means. Suddenly, Connelly revealed he'd had a visitation from God before confessing; in fact, it seems God ordered him into the undertaking. Public defenders seized upon this to argue his confession was involuntary — you know, exactly as if a few rogue police officers had hustled Connelly down to a basement and worked him over with rubber hoses.

Don't dare laugh, either, because the Supreme Court bought this sophistry after a push from an agreeable psychiatrist.

It's bad enough that some offenders already escape lengthy incarceration through insanity pleas. At least, however, they're put away in mental hospitals after a trial. This case adds an ugly twist to defense lawyers' options. As Deputy District Attorney Gilberto Espinoza says, "If this (ruling) stands, we may never be able to use any confession if an individual said he felt a compulsion to confess for whatever reason."

Not only won't the criminally insane go to jail, they may not even be tried.

In short, this ruling is on par with the state court's eccentric Quintero opinion of a couple years ago. In that case, the court ruled that police had no right to arrest a man in a neighborhood that had recently been burglarized, even though he had wrapped a TV set and video game under his shirt and his pockets were later found carrying jewelry. Unfortunately, the defendant died before the U.S. Supreme Court could hear that appeal.

It would be nice if local prosecutors could obtain a repudiation of at least one instance of the state high court's too-frequent forays into hair-splitting technicalities. If there is a better candidate than the Connelly case, we can't think of it.